

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
v.	)	<b>CRIMINAL ACTION NO.</b>
	)	<b>CR-04-PT-0199-S</b>
	)	
<b>McWANE, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION AND ORDER**

The court makes the following present rulings, subject to change only on citation of clearly controlling law to the contrary.

1. The court will not give a *Pinkerton* instruction unless there is clear controlling law suggesting that the court has no discretion in this regard or if it is the only claimed basis for criminal responsibility.
2. The court will likely not charge on the responsible corporate officer doctrine unless there is clear controlling law which suggests that the court has no discretion in the area or if it is the only basis for conviction as to one or more defendants. The parties should research the issue of whether the indictment must specifically charge on the basis of the responsible corporate officer doctrine before it is applicable.

The court's present position is based upon the fact that such charges could be confusing and that there is no justifiable reason to further so encumber the case.

This 20th of April, 2005.

A handwritten signature in blue ink, reading "Robert B. Propst", is displayed on a light orange rectangular background. The signature is written in a cursive style with a large, looped initial 'R'.

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**ROBERT B. PROPST**  
**SENIOR UNITED STATES DISTRICT JUDGE**